

HOUSE BILL NO. 390

INTRODUCED BY M. REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR THE LICENSING OF OUTPATIENT BIRTH CENTERS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 50-5-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department

1 rule as disabled.

2 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
3 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
4 administration.

5 (B) The term does not include the administration of prescriptive medications.

6 (6) "Affected person" means an applicant for a certificate of need, a health care facility located in the
7 geographic area affected by the application, an agency that establishes rates for health care facilities, or a
8 third-party payer who reimburses health care facilities in the area affected by the proposal.

9 (7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal
10 care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related
11 services.

12 (8) "Capital expenditure" means:

13 (a) an expenditure made by or on behalf of a health care facility that, under generally accepted
14 accounting principles, is not properly chargeable as an expense of operation and maintenance; or

15 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any
16 other property of value had changed hands.

17 (9) "Certificate of need" means a written authorization by the department for a person to proceed with
18 a proposal subject to 50-5-301.

19 (10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and
20 prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems
21 and endangers the health, interpersonal relationships, or economic function of an individual or the public health,
22 welfare, or safety.

23 (11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,
24 radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from
25 the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease
26 or assessment of a medical condition.

27 (12) "College of American pathologists" means the organization nationally recognized by that name that
28 surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards
29 and requirements.

30 (13) "Commission on accreditation of rehabilitation facilities" means the organization nationally

1 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status
2 to a rehabilitation facility that it finds meets its standards and requirements.

3 (14) "Comparative review" means a joint review of two or more certificate of need applications that are
4 determined by the department to be competitive in that the granting of a certificate of need to one of the
5 applicants would substantially prejudice the department's review of the other applications.

6 (15) "Congregate" means the provision of group services designed especially for elderly or disabled
7 persons who require supportive services and housing.

8 (16) "Construction" means the physical erection of a health care facility and any stage of the physical
9 erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

10 (17) "Council on accreditation" means the organization nationally recognized by that name that surveys
11 behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and
12 mental health centers upon their requests and grants accreditation status to programs and facilities that it finds
13 meet its standards and requirements.

14 (18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
15 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to
16 50-5-233.

17 (19) "Department" means the department of public health and human services provided for in 2-15-2201.

18 (20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases
19 and includes freestanding hemodialysis units.

20 (21) "Federal acts" means federal statutes for the construction of health care facilities.

21 (22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision
22 of the state, or an agency of a political subdivision.

23 (23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private
24 or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to
25 provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The
26 term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home
27 health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities,
28 intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers,
29 outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care
30 facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(29) "Infirmarium" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmarium--A" provides outpatient and inpatient care;

(b) an "infirmarium--B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in 53-20-102, or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that

1 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless
2 a longer period is required because transfer to a hospital is precluded because of inclement weather or
3 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction
4 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse
5 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
6 of the individual.

7 (b) either is located in a county with fewer than six residents a square mile or is located more than 35
8 road miles from the nearest hospital.

9 (37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental
10 illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any
11 combination of these services.

12 (38) "Nonprofit health care facility" means a health care facility owned or operated by one or more
13 nonprofit corporations or associations.

14 (39) "Offer" means the representation by a health care facility that it can provide specific health services.

15 (40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
16 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions
17 of a youth and that:

18 (i) serves either adjudicated or nonadjudicated youth;

19 (ii) charges a fee for its services; and

20 (iii) provides all or part of its services in the outdoors.

21 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts,
22 4-H clubs, or other similar organizations.

23 (41) "Outpatient birth center" means a facility that provides comprehensive prenatal, delivery, postnatal,
24 and newborn care to ambulatory, low-risk patients under the direction of a health care provider who is licensed
25 to provide the care and that is operating within the scope of practice allowed by the health care provider's license.

26 ~~(41)~~(42) "Outpatient center for primary care" means a facility that provides, under the direction of a
27 licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient
28 center for surgical services.

29 ~~(42)~~(43) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or
30 organization that is specifically designed and operated to provide surgical services to patients not requiring

hospitalization and that may include recovery care beds.

~~(43)~~(44) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(44)~~(45) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(45)~~(46) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(46)~~(47) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

~~(47)~~(48) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(48)~~(49) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(49)~~(50) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(50)~~(51) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

~~(51)~~(52) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(52)~~(53) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(53)~~(54) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(54)~~(55) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(55)~~(56) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis,

1 care, or treatment of one or more of the following categories:

2 (i) patients with a cardiac condition;

3 (ii) patients with an orthopedic condition;

4 (iii) patients undergoing a surgical procedure; or

5 (iv) patients treated for cancer-related diseases and receiving oncology services.

6 (b) For purposes of this subsection ~~(55)~~ (56), a specialty hospital may provide other services for medical
7 diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by law
8 if the care encompasses 35% or less of the hospital services.

9 (c) The term "specialty hospital" does not include:

10 (i) psychiatric hospitals;

11 (ii) rehabilitation hospitals;

12 (iii) children's hospitals;

13 (iv) long-term care hospitals; or

14 (v) critical access hospitals.

15 ~~(56)~~(57) "State health care facilities plan" means the plan prepared by the department to project the need
16 for health care facilities within Montana and approved by the governor and a statewide health coordinating council
17 appointed by the director of the department.

18 ~~(57)~~(58) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either
19 acute care or extended skilled nursing care to a patient."

20
21 **NEW SECTION. Section 2. Outpatient birth centers -- licensure -- rulemaking.** (1) The department
22 shall license outpatient birth centers using the procedures provided for in Title 50, chapter 5, parts 1 and 2.

23 (2) Pregnancy-related care provided by an outpatient birth center is limited to ambulatory patients with
24 a normal low-risk pregnancy presenting no complications.

25 (3) The application for an outpatient birth center must include:

26 (a) the name and address of the applicant;

27 (b) the location of the outpatient birth center;

28 (c) the name of the person or persons who will manage or supervise the outpatient birth center; and

29 (d) an acknowledgment that the outpatient birth center will consult with or transfer care to a health care
30 facility as required by the health care provider's scope of practice.

1 (3) The department may adopt rules necessary to implement and administer this section, including but
2 not limited to:

3 (a) the type of acknowledgment to be required on the application from each type of health care provider
4 licensed to provide prenatal, delivery, postnatal, and newborn care; and

5 (b) the medical situations in which an outpatient birth center must consult with a health care facility or
6 transfer care of a patient to a health care facility.

7 (4) Rules adopted under this section must be based on the respective scopes of practice for health care
8 providers licensed to provide prenatal, delivery, postnatal, and newborn care.

9
10 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an
11 integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 2].

12 - END -